

REMARKS

Applicants wish to thank the Examiner for his keen review of the present patent application.

Applicants, again, acknowledge and appreciate that the Examiner has concluded that claim 9 has allowable subject matter.

I. Rejection Under 35 USC §112

In view of the present Office Action, Applicants appreciate that no alleged 35 USC §112 issues remain.

II. Final Rejection Under 35 USC §102(e)

The Examiner, again, has rejected claims 1-8 under 35 USC §102(e) as being anticipated by Cirigliano et al., U.S. Patent No. 6,036,986 (hereinafter '986). In the rejection, the Examiner maintains, in summary, that the '986 reference discloses a tea beverage containing 0.2% tea solids, sorbic acid, benzoic acid, cinnamic acid, lemon flavor or juice, and essential oils. Particularly, the Examiner continues to believe that any lemon flavor employed in a beverage will bring along essential oil to that beverage (as alleged in the Office Action of January 16, 2003). In view of this, the Examiner believes that the rejection made under 35 USC §102(e) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is, again, the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a beverage that contains a preservative system comprising 1 to 175 ppm cinnamic acid, 10 to 200 ppm sorbic acid or benzoic acid and at least one essential oil other than cinnamic acid.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of essential oil, the amount and type of preservative, the amount of essential oil, the amount of tea solids, and that the beverage may be a tea based beverage.

In contrast, and as already made of record, the '986 reference describes cinnamic acid for use in tea containing beverages. The tea containing beverage described in the '986 reference is a beverage which is drinkable and prepared from concentrates, extracts or powder. The '986 reference does mention that other flavoring agents and/or juices may be added to the beverage whereby the juices can be fruit juices, vegetable juices and the like. There is, again, no teaching, contrary to the Examiner's conclusion, in the '986 reference to employ at least one essential oil other than cinnamic acid in a beverage as set forth in the presently claimed invention. Additionally, nothing in the '986 reference suggests the essential oils set forth in the claims and nothing in the '986 reference suggests the amount of essential oil that should be used. Moreover, even if one was to hypothetically assume that fruit juice and lemon-flavor contain essential oils, such a hypothetically assumption would not yield the amount of essential oil employed in this invention since very little flavor component is in a beverage. In view of this, it is

respectfully submitted that all limitations of the presently claimed invention are not found in a single source, namely the '986 reference. Thus, Applicants submit that the rejection made under 35 USC §102(e) be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

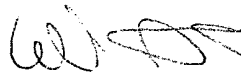
In view of the present Office Action, it is apparent that the previous rejection made under 35 USC §103 has been withdrawn as a result of Applicants' comments filed 14 April 2003.

Applicants respectfully submit that claims 1-9 are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicants further submit that all pending claims are ready for appeal.

In the event the Examiner has any questions or concerns regarding the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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